BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

LELAND HAMNER Claimant	>
VS.))) Docket No. 202,065
HUNT TRANSPORTATION Respondent))
AND	
NATIONAL AMERICAN INSURANCE COMPANY Insurance Carrier	\

ORDER

Claimant appeals from an Order dated November 21, 1995 which denied claimant's request for preliminary benefits.

ISSUES

The sole issue to be considered on appeal is whether claimant was an employee or an independent contractor of respondent Hunt Transportation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The issue raised on appeal concerns whether claimant's injury arose out of and in the course of his employment and the issue is, therefore, subject to review in an appeal from a preliminary order. K.S.A. 44-534a.
- (2) The Appeals Board finds that the evidence presented at the preliminary hearing reflects a relationship more indicative of an independent contractor than an employee relationship and, accordingly, the decision by the Administrative Law Judge should be affirmed.

Claimant drove his own semi tractor-trailer hauling freight for respondent and was paid on a per mile basis. Claimant was not required to haul a certain number of loads, or any particular loads, he was free to decide to haul or not to haul at his own discretion. Claimant had the right to hire his own employee to drive the truck. Claimant was responsible for maintenance of the tractor and providing his own insurance. The contract

IT IS SO ORDERED.

between claimant and respondent could be terminated on thirty (30) days notice. Claimant paid his own social security taxes and his own self-employment tax. The contract between claimant and respondent expressly described claimant as an independent contractor. Although there were other aspects of the relationship indicative of an employment relationship, the Appeals Board finds the evidence presented to date indicates the relationship was that of an independent contractor.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Robert H. Foerschler dated November 21, 1995 should be, and the same is, affirmed.

Dated this day of January 1996.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: W. Walter Craig, Wichita, Kansas Ronald J. Laskowski, Topeka, Kansas Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director